

GRIEVANCE ADMINISTRATOR,
Petitioner/Appellant,

v

FERNANDO EDWARDS, P-36502,
Respondent/Cross-Appellant.

Case Nos. ADB 31-88; 47-88

Decided: December 6, 1988

BOARD OPINION

Respondent's license to practice law was suspended for two years by a hearing panel based upon its finding that the respondent endorsed his client's name to a settlement check of \$2878.70 and misappropriated those funds; made misrepresentations to his client regarding his receipt of the funds; was not candid in his answer to requests for investigation and practiced law while his license was automatically suspended for failure to pay his annual Bar dues. The Attorney Discipline Board has considered the petition for review filed by the Grievance Administrator and the cross-petition filed by the respondent and concludes that respondent's conduct warrants revocation of his license to practice law.

The respondent was retained by Barbara Ann Johnson in September 1986 to represent her in a personal injury action. On January 6, 1987, he received a check from Transamerica Insurance Services in the amount of \$2878.70, payable to his client and himself, as reimbursement of her medical expenses and for the release of her claim for injuries. In his answer to the complaint in this case and in his testimony to the hearing panel, the respondent has essentially admitted or pleaded no contest to the charges that he failed to notify his client that he had received the settlement funds, that he endorsed the check by signing her name and then deposited the check in his wife's personal checking account. When questioned by his client, respondent Edwards deliberately attempted to conceal his actions by telling her, at various times, that the insurance carrier refused to settle her claim or that the check which he received was not negotiable and that a new check had not yet been issued.

It is the respondent's claim that he was also handling a divorce and bankruptcy matter for his client and that she was refusing to pay him the agreed upon fees in those matters when he received the settlement check in the personal injury action. In his brief filed in support of his cross-petition for review, the respondent insists on characterizing his misconduct as a legitimate fee dispute which was poorly handled. It is clear from the record below and the pleadings filed by the respondent that he either does not understand or has a callous disregard for two of the most important duties of an attorney: The duty to safeguard client funds and the duty to tell the truth.

Whether or not Mr. Edwards believed that a legitimate fee dispute existed when he received the settlement check, Canon 9 of the Code of Professional Responsibility was unequivocal in its directs that he promptly notify his client of the receipt of those funds [DR 9-102(B)(1)] and that the funds be segregated from his own money by depositing the check in an identifiable bank account, not to be withdrawn until the alleged fee dispute was resolved [DR 9-101(A)(2)]. Respondent's continued emphasis on the fee dispute aspect of this case is especially troubling in light of his candid admission that he signed the settlement check without his client's knowledge or authorization, that the check was deposited in his wife's checking account and that he lied to his client when she inquired about her insurance settlement. Had the respondent chosen to appear at the review hearings to present oral arguments to answer questions, we might have gained some insight into respondent's understanding of his responsibilities as an attorney. Respondent notified the Board that he now resided in the State of California and would be unable to attend that hearing and we must therefore draw conclusions from the stark record before us.

Respondent's commingling and misappropriation of client funds, in the absence of other mitigating factors, warrants consideration of the Grievance Administrator's argument that a two-year suspension is insufficient. Our concerns are magnified, however, by the hearing panel's further findings that the respondent continued to hold himself out as an attorney during the period of January 21, 1987 to February 2, 1987 when his license to practice law was automatically suspended for his failure to pay his annual dues to the State Bar of Michigan and their finding that he supplied a false answer to the Grievance Administrator in response to the Administrator's Request for Investigation regarding his activities during that suspension.

As the adjudicative arm of the Michigan Supreme Court for discharge of its responsibility to supervise and discipline Michigan attorneys, the Attorney Discipline Board has been given the authority to review orders of discipline in accordance with the court rules. Keeping in mind the general principle enunciated by our Supreme Court at MCR 9.103(A) that the license to practice law in Michigan is a continuing proclamation that the holder is fit to be entrusted with professional matters and to aid in the administration of justice as an attorney and counsellor, we cannot, in good faith, make such a proclamation with regard to this respondent. Therefore, it is our decision that the two-year suspension imposed by the hearing panel is vacated and the respondent's license is revoked.

Martin M. Doctoroff, Remona A. Green, Hanley M. Gurwin, Robert S. Harrison, Patrick J. Keating, Theodore P. Zegouras.